

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 49 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

APOLLO CONSTRUCTION CO P LTD

Appearance:

1. INCOME TAX REFERENCE No. 49 of 1991
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question is referred for the opinion of this Court in respect of assessment years 1983-84 and 1984-85 :-

"Whether, the appellate Tribunal is right in law and on facts in holding that the business of constructing roads is a manufacturing activity and hence the assessee was entitled to investment allowance under Section 32A and deductions under Section 80HH and 80I of the Income-tax Act, 1961?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The learned counsel for the revenue submits that since the assessee is a firm engaged in the business of constructing roads, the assessee cannot be said to be manufacturing or producing any article. The learned counsel heavily relies on the decision of the Apex Court in CIT vs. N.C. Budharaja and Co., 204 ITR 412.

3. Having gone through the aforesaid decision, we find that the Tribunal erred in holding that the business of constructing roads is a manufacturing activity. We are, therefore, of the view that the assessee was not entitled to investment allowance under Section 32A and deductions under Sections 80HH and 80I of the Act. We accordingly answer the question in the negative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-